

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Carrie L. Scott and Joseph E. Macon,)	C/A No. 8:08-00015-RBH-BHH
)	
Plaintiffs,)	
)	
v.)	REPORT
)	AND
)	RECOMMENDATION
DISH Network; Bank of America,)	
)	
Defendants.)	
)	

This case is before the Court because of the Plaintiffs' failure to comply with the undersigned's Order of January 22, 2008, (Order) (Docket Entry # 9) and because of the Plaintiffs' failure to prosecute this case in a timely manner. This case was filed by the Plaintiffs *pro se* on January 3, 2008. Plaintiff Macon filed an Application to Proceed without Prepayment of the Filing Fee (Form AO 240) which this court construed as a motion requesting to proceed *in forma pauperis* (Docket Entry #3). Plaintiff Macon's motion was granted January 22, 2008, (Docket Entry # 10) allowing him to proceed *in forma pauperis*.

Following initial review of this case, the Order was issued directing Plaintiffs to submit certain documents required to bring this case into proper form for consideration of whether service of process should be authorized. Specifically, the Plaintiffs were ordered to complete the "Statement of Claim" and the "Relief" portions of the complaint form. The complaint as filed by Plaintiffs did not contain any factual allegations against the named Defendants nor specify the damages suffered.

Additionally, the Plaintiffs were ordered to provide completed necessary service documents (summonses and Forms USM-285) for possible service of process on the defendants after evaluation of the completed complaint. The Plaintiffs were also ordered to complete and file *Pro Se* Party's Answers to Rule 26.01 Interrogatories. Plaintiff Scott

was ordered to either pay the filing fee or complete, sign and return a Form AO 240.

In the Order, Plaintiffs were specifically informed: **“If Plaintiffs do not bring this case into proper form within the time permitted under this Order, this case could be dismissed for failure to prosecute.”** (Docket Entry # 9.) On January 29, 2008, Plaintiffs submitted completed service documents. However, the submission of service documents alone is insufficient to bring this case into proper form, and the deadline for compliance has lapsed.

Plaintiffs have failed to provide a completed complaint form sufficient for evaluation for possible service of process. Plaintiffs have failed to provide completed *Pro Se* Party’s Answers to Rule 26.01 Interrogatories. Plaintiff Scott has failed to pay the filing fee or request to proceed *in forma pauperis*. By failing to bring this case into proper form, the Plaintiffs have failed to prosecute their case, and it should be dismissed. See *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962).

RECOMMENDATION

Accordingly, it is recommended that summonses not be issued and this case be dismissed *without prejudice* due to Plaintiffs’ failure to comply with this Court’s Order and failure to prosecute this case. See Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a Plaintiff fails to comply with “any order of the court.”)

s/Bruce Howe Hendricks
United States Magistrate Judge

March 4, 2008
Greenville, South Carolina

Plaintiff’s attention is directed to the important notice on the following page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).